

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of TANDLER MIAH FELPS, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHARLES RAY PURDUM III,

Respondent-Appellant.

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In the Matter of TANDLER MIAH FELPS, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RAVEN FELPS,

Respondent-Appellant.

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UNPUBLISHED

August 17, 2006

No. 268114

Barry Circuit Court

Family Division

LC No. 04-006981-NA

No. 268115

Barry Circuit Court

Family Division

LC No. 04-006981-NA

Before: Zahra, P.J., and Neff and Owens, JJ.

PER CURIAM.

In Docket No. 268114, respondent Charles Purdum III (Purdum) appeals as of right from an order terminating his parental rights to the minor child, Tandler Felps (d/o/b 8/22/04), under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue) and (g) (failure to provide proper care or custody). In Docket No. 268115, respondent Raven Felps (Felps) appeals as of right

from the same order terminating her parental rights to the minor child under the same subsections. This Court consolidated the appeals. We affirm.

## I Standard of Review

Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the court shall terminate parental rights unless it finds that the termination is clearly not in the best interests of the children. *Id.* at 364-365. This Court reviews the lower court's findings under the clearly erroneous standard. MCR 3.977(J); *In re Sours, Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Also, admission and exclusion of evidence is within the broad discretion of the trial court. *May v Parke Davis and Co*, 142 Mich App 404, 421; 370 NW2d 371 (1985).

## II Analysis

### A Docket No 268115

Felps argues that termination of her parental rights was improper for several reasons. We disagree. Her parental rights were terminated under MCL 712A.19b(3)(c)(i) and (g), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

\* \* \*

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

\* \* \*

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

DHS filed a complaint against Felps on December 23, 2004. At the time, she was in jail for violating Drug Court rules and did not know the location of the minor child. The trial court

authorized the petition and the minor child, who was eventually found with Felps' mother, was placed with DHS. At the January 24, 2004 and January 19, 2005 hearings, Felps pleaded to several allegations contained in the petition. Felps agreed that she had been convicted of methamphetamine possession on September 23, 2004, and sentenced to four years' probation. She did not contest that on December 9, 2004, she pleaded guilty to violating her probation by using drugs. Felps was then ordered into the drug court program. On December 22, 2004, she was jailed for alcohol use. On December 27, 2004, Felps again pleaded guilty to a probation violation, and was sentenced to twenty four days in jail. Felps also admitted to "prior neglectful or abusive behaviors toward her children resulting in Protective Service's involvement." Notably, Felps admitted that "[o]n or about May 20, 2003, [she] was placed in jail for methamphetamine charges and there was no one to care for her older daughter . . . , whom she had temporary custody. . . ." Also, Felps admitted that she "failed to comply with the terms of her criminal probation."

Before the December 2005 dispositional hearing, Felps violated her probation by testing positive for alcohol. She was jailed from April 11, 2005 to June 9, 2005. Felps again violated her probation after testing positive for opiates, and was jailed from July 1, 2005 to July 8, 2005. On October 12, 2005, Felps was terminated from Drug Court for using opiates while pregnant. Her termination from Drug Court made her subject to sentencing on the September 23, 2004 methamphetamine possession conviction. On November 30, 2005, Felps was sentenced to 2 to 10 years' imprisonment.

Felps first claims that the trial court erroneously based its decision on Felps' probation violations, which were only proven by a preponderance of the evidence. MCR 6.445(E)(1). The trial court found that:

It is—it has been proven by clear and convincing evidence that [Felps] has not complied with the terms of her probation. She has taken opiates despite being on Drug Court probation. She has admitted herself about using drugs and alcohol causing a probation violations.

We reject Felps' claim that the trial court clearly erred in basing its decision on Felps' probation violations as without merit. The trial court noted that Felps admitted that she violated probation by using drugs and alcohol. Rather than relying on orders to find that Felps had not complied with her probation, the trial court focused on the conduct underlying Felps' violations. Thus, regardless of the quantum of evidence used to establish that Felps had violated her probation in criminal court, the trial court here independently concluded that Felps has not complied with the terms of her probation. Moreover, Felps' admissions to drug and alcohol use adequately support the trial court's finding that she had not complied with the terms of her probation.

Felps next argues that the trial court erred in finding subsections (c)(i) and (g) established by clear and convincing evidence. We disagree.

While Felps complied with some of her PAA, a parent must benefit from services in order to be able to provide a proper home for the child. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). Felps finished intensive outpatient (IOP) treatment and anger management and completed most or all of the VanderBeck criteria. However, as outlined, *supra*,

she has an extensive history of substance abuse. Indeed, in November 2005, she was sentenced to two to ten years' imprisonment and once again became unavailable to care for or even visit the minor child. Felps' habitual drug use and incarceration shows that she would not be able to provide proper care or custody for the minor child for the foreseeable future. We conclude that subsections (c)(i) and (g) were proven by clear and convincing evidence.

Felps also argues that the minor child's best interests would not be served by termination. There is evidence that she did have a bond with the minor child. However, her failure to deal with her drug problem reveals that she would continue to place the minor child at risk of not receiving proper care. The trial court did not clearly err in its best interests ruling. *Trejo, supra*, 462 Mich 341, 353.

Finally, in regard to the testimony of the court-appointed special advocate (CASA), the trial court did not mention that testimony or recommendation in its opinion. Further, the CASA's change of recommendation, if any, was directed toward Purdum, not Felps.<sup>1</sup> Thus, this Court rejects Felps' argument.

#### B Docket No 268114

Purdum argues that the trial court erred in ordering DHS to initiate proceedings to terminate his parental rights to the minor child. Specifically, Purdum claims the trial court erred in failing to find that long-term foster care with the minor child's paternal grandparents was in the minor child's best interests.

MCL 712A.19a(1) provides that, "if a child remains in foster care and parental rights have not been terminated, the court shall conduct a permanency planning hearing within 12 months after the child was removed from his or her home." MCL 712A.19a(6) states that,

[i]f the court determines at a permanency planning hearing that the child should not be returned to his or her parent, the court shall order the agency to initiate proceedings to terminate parental rights to the child not later than 42 days after the permanency planning hearing, unless the court finds that initiating the termination of parental rights to the child is clearly not in the child's best interests.

At the November 3, 2005, PPH, Nicole Sears of DHS testified that Purdum "continues to test positive for marijuana, was "unsuccessfully discharged from IOP," and that the best interests of the minor child was "permanency in his life and at this point, neither [Felps] nor [Purdum], is appropriate for placement." On cross-examination, Purdum's attorney specifically asked Sears "the agency's position with rather than termination with guardianship with the paternal grandparents." Sears replied that the agency did "not recommend the guardianship," because of

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<sup>1</sup> We note that Purdum does not mention the CASA's testimony in his brief on appeal. Rather, Purdum challenges the trial court's decision in regard to the November 3, 2005 permanency planning hearing, *infra*, which preceded the testimony of the CASA at the December 5, 2005 and December 29, 2005 termination hearings.

the minor child's age (fifteen months), and "[Purdum] remains living in their home and he's not appropriate."

The trial court agreed with Sears that "[p]rogress has not been made towards the child's return home or to place with the father. Returning the child home would—with the father at this point would cause substantial risk of harm to the child's life, physical health and mental well-being." In rendering its decision, the trial court noted that Purdum's use of marijuana had been an issue since the amended petition was filed, and had not been addressed. Indeed, the trial court found that Purdum had made "no effort whatsoever to deal with that issue."

The trial court did not err in ordering DHS to file a petition for termination of Purdum's parental rights. The trial court determined that the minor child should not live with Purdum because Purdum had failed to address his marijuana use. Further, because Purdum lived with his parents, who also had longstanding problems with drug abuse, the trial court did not err in refusing to place the minor child with his paternal grandparents. Giving due regard to the trial court's special opportunity to observe the witnesses, we are not left with a definite and firm conviction that the trial court erred in ordering the DHS to file a petition to terminate Purdum's parental rights.

Affirmed.

/s/ Brian K. Zahra  
/s/ Janet T. Neff  
/s/ Donald S. Owens